

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS

DIVISION 1: BUSINESS LICENSES AND REGULATIONS

Chapter 13: ADULT-ORIENTED BUSINESS LICENSES.

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41.131 Purpose and Intent.

(a) It is the purpose of this chapter to regulate adult-oriented businesses to promote the health, safety, and general welfare of the citizens of the County of San Bernardino. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials.

Adopted Ordinance #3466 (1991);

41.132 Definitions.

(a) ADULT-ORIENTED BUSINESSES: An "Adult-Oriented Business":

(1) It is any business, where employees or patrons expose "specified anatomical areas" or engage in "specified sexual activities", or any business which offers to its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas."

Adult-oriented businesses do not include bona fide medical establishments operated by properly licensed and registered medical personnel with appropriate medical credentials for the treatment of patients.

In determining whether a use is an adult-oriented business, only conduct or activities which constitute a regular and substantial course of conduct shall be considered. Isolated instances of conduct or activities described in this section as characterizing an adult-oriented business shall not be considered except where such activities, taken together, constitute a regular and substantial course of conduct.

(2) shall include but shall not be limited to the following:

(A) ADULT BOOKSTORE. An "Adult Bookstore" is an establishment having, as a substantial portion of its stock-in-trade, and offering for sale for any form of consideration, any one or more of the following:

(I) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified anatomical areas";

(II) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities"; or

(III) Goods which are replicas of or which simulate, "specified anatomical areas", or goods which are designed to be placed on or in "specified anatomical areas", or to be used in conjunction with "specified sexual activities", to cause sexual excitement.

(B) ADULT CABARET. An "Adult Cabaret" is a bar, nightclub or similar establishment which features dancers, strippers, or similar entertainers who expose "specified anatomical areas" of their bodies.

(C) ADULT THEATER. An "Adult Theater" is any place, building, enclosure or structure, partially or entirely used for live performances or presentations, motion pictures, or pictures or images projected or produced from slides, films, video or other media, including but not limited to coin operated or slug operated or electronically or mechanically controlled still or motion picture machines, projectors, video screens or other image-producing devices, which place, building, enclosure or structure is used for presenting matter characterized by an emphasis on depicting, exposing, describing or relating to "specified sexual activities" or "specified anatomical areas", for observation by patrons therein.

(D) SEXUAL NOVELTY STORE. A "Sexual Novelty Store" is an establishment having, as a substantial portion of its stock-in-trade, goods which are replicas of, or which simulate, "specified anatomical areas" or "specified

sexual activities", or goods which are designed to be placed on or in "specified anatomical areas", or to be used in conjunction with "specified sexual activities", to cause sexual excitement.

(b) PERSON means and includes person(s), firms, corporations, partnerships, associations or any other forms of business organization or group.

(c) SPECIFIED ANATOMICAL AREAS shall include any of the following human anatomical areas:

(1) Less than completely and opaquely covered genitals, pubic regions, buttocks, anuses or female breasts below a point immediately above the top of the areolae; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(d) SPECIFIED SEXUAL ACTIVITIES include all the following:

(1) The fondling or other erotic touching of the following human anatomical areas: genitals, pubic regions, buttocks, anuses or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3), above.

Adopted Ordinance #3466 (1991);

41.133 License Required.

(a) A person commits a misdemeanor if he or she operates an adult-oriented business within the unincorporated areas of the County of San Bernardino without a valid license issued by the County of San Bernardino for the particular type of business.

(b) An application for a license must be made on a form provided by the Clerk of the Board of Supervisors. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises.

(c) A Conditional Use Permit, if required, must be obtained before a license application is accepted. The Conditional Use Permit application will be processed in accordance with the time limits of San Bernardino County Code § 83.030145.

(d) The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the San Bernardino County Department of Environmental Health Services, appropriate fire department, the San Bernardino County Department of Building and Safety, and the San Bernardino County Planning Department.

(e) Any person who wishes to operate an adult-oriented business must sign the application for the license as the applicant.

(f) The fact that a person possesses any other valid license issued by the County of San Bernardino does not exempt the person from the requirement of obtaining an adult-oriented business license. A person who operates an adult-oriented business and possesses any other County license shall comply with the requirements and provisions of this chapter and all County Codes as well as the requirements and provisions of such other license.

Adopted Ordinance #3466 (1991);

41.134 Issuance of License.

(a) The Clerk of the Board of Supervisors shall issue or deny the issuance of a license to an applicant within thirty (30) days after receipt of an application; except that a Conditional Use Permit shall be approved pursuant to County Code § 83.030145. The Clerk of the Board shall issue the license unless the Clerk finds one or more of the following to be true:

(1) An applicant is under eighteen (18) years of age;

(2) An applicant is overdue in payment to the County of San Bernardino of fees owed by the applicant in relation to the adult-oriented business which is the subject of the application;

(3) An applicant has failed to completely fill out application for a license or has provided materially false information on the application;

(4) The license fee required by this chapter has not been paid;

(5) The premises to be used for the adult-oriented business has not been approved by the San Bernardino County Department of Environmental Health Services, appropriate fire department, the San Bernardino County Building and Safety Department and Department of Planning as being in compliance with applicable laws and ordinances, including the issuance of a Conditional Use Permit pursuant to San Bernardino County Code § 41.133(c);

(6) The applicant is operating the adult-oriented business without a license in violation of § 41.133 of this chapter.

(b) The license shall state on its face the name of the person or persons to whom it is issued, the expiration date, and the address of the adult-oriented business. The license shall be posted in a conspicuous place at or near the entrance to the adult-oriented business so that it may be easily read at any time.

(c) The Clerk of the Board shall send to the applicant or licensee, by certified mail, return receipt requested, written notice of the action to issue or deny the license. The decision of the Clerk of the Board to deny issuance of the license shall be final.

Adopted Ordinance #3466 (1991);

41.135 Fees.

The initial application fee, the initial license fee, and the annual renewal fee for an adult-oriented business license shall be as established in the San Bernardino County Code schedule of fees.

Adopted Ordinance #3466 (1991);

41.136 Inspection.

An applicant or licensee shall permit representatives of the San Bernardino County Sheriff's Department, San Bernardino County Department of Environmental Health Services, appropriate fire department, the San Bernardino County Department of Building and Safety and the Planning Department to inspect the premises of an adult-oriented business for the purpose of insuring compliance with the provisions of this chapter at any time the premises is open for business, provided reasonable and normal business operations shall not be interfered with and the inspection is conducted in the same manner as an inspection for other businesses.

Adopted Ordinance #3466 (1991);

41.137 Expiration of License.

Each license shall expire one (1) year from the date of issuance and may be renewed only by making application upon penalty of perjury that there has been no material change in the business or its operation. Applications for renewal should be filed at least thirty (30) days before the expiration date; the application for renewal shall not extend the license beyond the expiration date. The Clerk of the Board of Supervisors shall issue the license or deny the application for renewal within thirty (30) days; the decision of the Clerk of the Board to deny renewal of the license shall be final.

Adopted Ordinance #3466 (1991);

41.138 Suspension.

The Clerk of the Board of Supervisors for the County of San Bernardino shall suspend a license if he or she determines that a licensee has failed to comply with any of the provisions of §§ 41.133, 41.134, or 41.135 of this chapter.

The suspension shall be for thirty (30) days or until the violation is corrected, whichever is longer.

Adopted Ordinance #3466 (1991);

41.139 Revocation.

(a) The Clerk of the Board of Supervisors for the County of San Bernardino shall revoke a license if a cause for suspension in section 41.138 occurs and the license has been suspended within the preceding twelve (12) months; or,

(b) The Clerk of the Board of Supervisors for the County of San Bernardino shall revoke a license if he or she determines that:

(1) A licensee gave material false or misleading information in the material submitted to the Clerk of the Board during the application process;

(2) A licensee or an employee knowingly operated the adult-oriented business when the licensee's license was suspended;

(c) When the Clerk of the Board of Supervisors revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult-oriented business license for that business for one (1) year from the date the revocation became effective.

Adopted Ordinance #3466 (1991);

41.1310 Appeal.

(a) If the Clerk of the Board of Supervisors for the County of San Bernardino suspends or revokes a license, the Clerk of the Board shall send to the applicant or licensee, by certified mail, return receipt requested, written notice of the action. The decision to suspend or revoke the license shall be effective ten (10) days after the notice of the decision has been deposited in the U.S. mail.

(b) An appeal of the decision to suspend or revoke the license may be made to the Clerk of the Board of Supervisors prior to the date on which the decision becomes effective. A properly filed application for appeal stays the decision to suspend or revoke the license until a decision is rendered on the appeal.

(c) The appeal proceedings shall be conducted pursuant to County Code § 12.270 et seq. and shall be before the Board of Supervisors, unless the Board, in its sole discretion, appoints a hearing officer to conduct the hearing. The decision of the Board of Supervisors to suspend or revoke the permit shall be final and shall be subject to California Code of Civil Procedure § 1094.6.

Adopted Ordinance #3466 (1991);

41.1311 Transfer of License.

Any license shall be immediately void if the applicant attempts to transfer the license to another person or location.

Adopted Ordinance #3466 (1991);

41.1312 Location of Adult-Oriented Businesses.

The location of an adult-oriented business shall be as specified in Title 8 of the San Bernardino County Code, § 88.0701 et seq.

Adopted Ordinance #3466 (1991);

41.1313 Injunction.

A person who operates or causes to be operated an adult-oriented business without a valid license or in violation of § 41.1312 (location) of this chapter, is subject to a suit for injunction as well as prosecution for criminal violations.

Adopted Ordinance #3466 (1991);

41.1314 Severability.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are hereby declared to be severable.

Adopted Ordinance #3466 (1991);